

Regulatory frameworks are distinct

Rules conflicting with the law and individual rights are invalid

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CAN a body corporate make house rules? And what is the difference between conduct, management and house rules?

A body corporate has wide powers to do all things legally necessary to enforce rules, that is, management and conduct rules.

Owners, their tenants and visitors are required to respect the rules so that every person has full use and enjoyment of occupancy. Conduct rules relate to how owners, tenants and visitors should behave.

Management rules are about managing and running the scheme.

The powers and responsibilities of trustees are contained in the Sectional Titles Act 95 of 1986 as amended (STA) and regulations. The two sets of rules are discussed in section 35 of the STA.

Annexure 8 (Management rules) and 9 (Conduct rules) are in the Regulations, which form part of the STA. All the powers or authority that the owners and trustees have must be in the STA, the regulations read with Annexures 8 and 9.

House rules – well, these are not part of the STA, its Regulations and Annexures 8 and 9.

Lawmakers, through an Act of Parliament (Sectional Titles Act), included two sets of rules and carefully constructed what must be in these rules.

“There is no mention of house rules in this complex apparatus and, in view of the obvious care that has gone into the creation of the management and conduct rules, and the systems for amending them, it would be surprising indeed if the legislature intended that these checks and balances could be circumvented by the trustees of a scheme, or even by the members in general meetings, by the expedient of making house rules¹.”

Management and conduct rules can be amended, but the changes cannot include any rule that violates the rights of owners and those of other parties such as tenants and visitors.

Some trustees and owners introduce house rules to get around the constitutional rights of parties and the stringent requirements of the STA.

Rules are one of the most contentious subjects, to the point that racism is often brought into the dispute by parties.

The following are examples of rules that are not lawful and certainly unconstitutional, regardless if these are introduced in management, conduct or so called house rules: -

- the right to interview or screen a prospective tenant

¹ Wood-Bodley, M. C. ‘House rules’ in Sectional Title Schemes – are they ultra vires? *South African Law Journal* 120 (3), 602-609 (2003)

the right to limit prospective tenant's age (e.g. 24 years as the baseline to qualify as a tenant);

- owner expected to pay an increased levy because of her tenant's new born baby;
- a couple can be (unlawfully) evicted because of their newborn child, since the lease stipulated two occupants;
- a couple is required to pay additional monthly service charges for the new born who is deemed half an adult.

Certain trustees and supervisors implement rules that conflict with people's constitutional rights and infringe other laws enacted by Parliament.

It is obvious that bodies corporate and share blocks have to overcome challenges posed by certain "criminal" owners and tenants who have no qualms about shutting down a scheme through their (mis)conduct. Such persons need to be dealt with according to the law.

An enforcement mechanism is needed for owners and tenants who do not comply with management and conduct rules.

Rules, that are unlawful, however, cannot be enforced in spite of 100% support from the owners of a scheme. In fact, a body

corporate may end up paying legal costs should it be taken to court.

Ultimately, the legal cost implication will considerably affect the value of the levy for each owner.

An individual right to ownership of a sectional unit is constitutionally guaranteed and protected, but left unchallenged, is taken over by rules formulated by certain bodies corporate, trustees and supervisors.

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